S.B. Civil Writ Petition No.1035/04

25.01.2007

Hon'ble Mr. Justice Mohammad Rafiq

Mr. Ashwani Chobisa, Advocate for petitioner.
Mr. R.K. Agrawal, Advocate for respondent.

This writ petition has been filed against the order dated 6.1.2004 passed by Civil Judge in Civil Suit No.32/98 whereby that Court rejected the application of the petitioner filed under Order 1 Rule 10 CPC for their impleadment as plaintiff to the said suit.

Learned counsel for the petitioner Mr. Ashwani Chobisa submits that Mukesh Kumar Somani plaintiff-respondent no.2 had filed the Civil Suit seeking eviction of the defendant-respondent no.3 Dinesh Kumar Ladha on the ground of default in payment of the rent. Copy of the plaint has been

produced as Annexure-1, in para 2 of which it has been asserted that the defendant had taken the shop in question on rent from late Shri Kishan Chand the father of the plaintiff, on monthly rent of Rs.100/-. The petitioners submits that petitioner no.1 Smt. Janki is the widow of the said Shri Kishan Chand whereas petitioner no.2 Smt. Manju is his daughter and therefore they are the rightful claimants to recover possession of the shop in question.

On the other hand Mr. R.K. Agarwal learned counsel for the respondent No.2 argued that the aforesaid suit has been filed by the respondent no.2 in the capacity of a landlord who may not necessarily be the owner of the tenanted premises. He submits that petitioners were neither necessary parties nor were they proper parties because the suit filed by the respondent no.2 was merely based on the

relationship of landlord and tenant and the petitioners have nothing to do with the property. He argued that question of ownership and title is not relevant and therefore need not be and cannot go into by the trial court in adjudication of the subject eviction suit. He further argued that the petitioners, if so desire, may seek their remedy by filing a regular civil suit. But the scope of the present eviction suit cannot be allowed to be expanded by impleading them as plaintiffs as the original plaintiff is the master of the suit and it is he who has to decide as to who is to be impleaded as defendants thereto. In support of his argument, the learned counsel Mr. R.K. Agarwal relied on the judgments of Hon'ble Supreme Court in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay & Ors., (1992) 2 SCC 524 and in Dr. Ranbir Singh

Vs. Asharfi Lal (1995) 6 SCC 580. He further submits that the ownership and title of the suit property never remained with either late Shri Kishan Chand or the plaintiff. The property in fact belongs to Maheshwari Panchayat, Bundi and therefore the question of right by inheritance is wholly irrelevant to the controversy involved in the suit. Such a plea specifically been taken in reply to ground D.

Having considered the arguments of learned counsel for the parties and perused the material on record, I find that the suit has been filed by the respondent no.2 for eviction of the respondent no.3 on the ground of default in making payment of the rent. All these facts have controverted that the shop in question was let out to defendant (respondent no.3) herein by late Shri Kishan Chandji whom the plaintiff

(respondent no.2) claimed to be his father but at the same time it is also equally correct that in the said para of the plaint it has not been stated that late Shri Kishan Chandji let out the shop in question to the defendant Dinesh Kumar Ladha in the capacity of owner having title of the tenanted premises. It is a question which the petitioner can raise and can get be resolved by filing a separate Civil suit. There impleadment as plaintiffs in the present suit may not therefore be permissible as per the law.

With these observations, the writ petition is dismissed with no order as to costs.

(Mohammad Rafiq),J.

RS/-